

From: Shella Polk <Shella.Polk@yavapai.us>

Sent: Tuesday, May 14, 2019 11:17 AM

Subject: Please oppose SB1334 Repetitive Offender Sentencing

Dear Senator,

I write to urge you to oppose SB1334 Repetitive Offender Sentencing. This bill creates an unnecessary risk to public safety to cure a "problem" that has yet to be identified.

It has been reported that the sponsor, Rep. Ben Tuma, stated that the opposition to the bill from the county attorneys is "really" about "leverage." This is inaccurate and simply untrue. I oppose the bill because it is blatantly unfair to put a person who has never been in trouble with the law before in the same sentencing range as the repeat offender who avoids arrest or absconds prior to his sentencing, and because it makes Arizona less safe from predators.

Two hypothetical examples of how the bill will negatively impact public safety if it passes:

-In 2008, a 55-year old man enters an internet chat room and successfully lures a 15-year old girl to provide him with naked photos of herself, a class 2 felony pursuant to ARS 13-3553. He is tried, convicted and sentenced to probation on this first case. In 2019, he again enters an internet chat room, again lures a 15-year old girl to send him naked photos and again is arrested, tried and convicted. ***If SB1334 passes, this offender will be sentenced as a first-time offender on the new case and his prior conviction cannot be used to enhance the sentence.*** This is because SB1334 will eliminate the use of non-historical prior felony convictions for sentencing purposes (currently found in ARS 13-703A).

-In 2019, a schoolteacher in Arizona sexually abuses a 15-year old student and is arrested, tried, convicted and faces sentencing for a violation of ARS 13-1404, a class 5 felony. The investigation reveals the schoolteacher committed a similar offense in California in 2018, was convicted by a jury, but absconded before he was sentenced. If SB1334 passes, the Arizona court will have to sentence him **as a first-time offender** and the California offense **cannot be used to enhance his sentence.**

I simply cannot imagine these are outcomes desired by the House when they passed SB1334.

SB1334 will:

- Completely eliminate any enhanced sentencing ranges for persons with non-historical felony convictions, placing a person who has never been in trouble with the law in the same sentencing range as someone who has been convicted of one or two non-historical felonies;
- Will put the serial offender (e.g. the person who robs 5 different banks in my county over the course of one year) who does not get caught in the same sentencing range as a person who has never been in trouble with the law before;
- Will reward the person who absconds from the law prior to being sentenced while giving the defendant who committed an identical crime and appears for his sentencing before committing an additional offense a harsher sentence.
- Will repeal ARS 13-3419 that already creates a lower range of sentences for drug trafficking offenses not committed on the same occasion but consolidated for trial.

It has also been reported that the sponsor stated what is at stake "is the ability of prosecutors to allege multiple prior offenses with the threat of extended prison terms to essentially squeeze defendants into talking a plea deal." Again, this is untrue and inaccurate.

Current Arizona law explicitly states that the repetitive offender sentencing statute only applies to offenses **not committed on the same occasion** (ARS 13-703(A)), and that convictions for two or more offenses committed on the same occasion **shall be counted as only one conviction** (ARS 13-703(L)). Furthermore, this legislative session, the legislature passed—and the Governor signed—HB2602 that amends ARS 13-711 to give **discretion to the judge** to determine whether to run concurrent or consecutive multiple sentences imposed at the same time.

Moving forward, I suggest that the legislature fund two full-time research positions at the Arizona Criminal Justice Commission to interact with the legislature to research and answer questions about the criminal justice system, such as who is in prison and for what crimes. This will provide you with experts who can help you design sound public policy which considers all implications.

Please do not hesitate to contact me if you have any questions or comments.

Best regards,

Shella Polk, Yavapai County Attorney

255 East Gurley, Prescott, AZ 86301 / (928) 777-7352